DIRECT INVESTIGATION REPORT

GOVERNMENT MEASURES FOR STREET MANAGEMENT

December 2008

Office of The Ombudsman

Hong Kong

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EXECUTIVE SUMMARY

Direct Investigation
on Government Measures for Street Management

Background

On 1 November 2007, The Ombudsman initiated a direct investigation into three aspects of street management, namely:

- indiscriminate placing of skips at roadside;
- illegal parking of bicycles; and
- obstruction and nuisance from on-street promotional activities.

2. The departments concerned include the Food and Environmental Hygiene Department ("FEHD"), the Home Affairs Department ("HAD") and the Lands Department ("Lands D").

Street Management and District Administration

3. Street management problems arise when there is encroachment of public space for private gain or convenience at the expense of road safety, environmental hygiene and the quality of city life.

4. In 2007, the Administration set up a Steering Committee on District Administration ("SCDA"), chaired by the Permanent Secretary for Home Affairs, to provide a forum for resolving district management issues centrally.

5. In March 2008, the Chief Secretary for Administration further reminded departments of the need to address district issues in a timely and coordinated manner. Where necessary, district problems can be brought to his personal attention for speedy resolution.

Roadside Skips

6. Skips are large open containers commonly used for temporary storage of construction and demolition debris removed from nearby building or renovation sites. Complaints about skips generally focus on their obstruction to vehicular and pedestrian traffic and potential danger to motorists and pedestrians.

Current Legislation and Enforcement

7. Under section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28), Lands D can post notices on roadside skips requiring their removal, failing which the skips can be confiscated. Lands D guidelines state that staff should conduct an inspection upon receiving a complaint. If a skip is found, staff will post notice giving the owner at least one day for removal. If the skip still remains after the deadline, Lands D will remove it within three working days. Staff should process complaints promptly to minimise inconvenience to road users.

8. In 2007, SCDA invited Lands D to explore the feasibility of setting up a permit system for skips. An exchange of correspondence followed between Lands D and the Transport Department ("TD") over the question of responsibility, but that question remains unresolved.

Our Observations

Lands D's Delay

9. Statistics show that about 40% of Lands D inspections since 2006/07 took place over three working days after receipt of complaints. Some 20% of the cases over the same period took over five working days before a re-inspection to check for compliance was conducted. In one case, the skips had been allowed to stay on site for over 50 days despite the notices posted.

10. These point to a fundamental flaw in Lands D enforcement: the evident delay in action has little, if any, deterrent effect on real or prospective offenders.

Permit System for Long-term Solution

11. The Administration sees the need to prevent obstruction and unauthorised occupation of public space on the one hand and the necessity to place skips in public places on the other. There is already inter-departmental consensus that a permit system for skips should be developed.

12. The construction and renovation industry has a genuine need for using skips, but no lawful avenue exists for placing skips at roadside. Lands D has already explored various options. It has not formally reported nor been asked to submit a progress report. We see an urgent need for SCDA to be reconvened to restart the momentum.

Timely Inspection and Re-inspection

13. Meanwhile, as roadside skips are easily placed, removed and re-instated by the operators, prompt action in detection and firm enforcement is crucial. Lands D should streamline inspection procedures and tighten the timeframe for enforcement. Re-inspection and follow-up action should be carried out promptly.

14. In this connection, Lands D should enlist the assistance of district bodies and local residents through the District Councils ("DCs") and District Offices ("DOs") for close monitoring and early reporting of cases.

Further Measure

15. We consider it both reasonable, and necessary, for Lands D to recover from the persons convicted under section 6 of the Land (Miscellaneous Provisions) Ordinance the costs for Government removal of skips. Lands D has such power under the Ordinance.

Recommendations

16. The Ombudsman recommends that:

(a) SCDA reconvene promptly;

(b) Lands D report to SCDA the results of its study on the proposed permit system;

(c) Lands D streamline its procedures to tighten its timeframe for inspection and re-inspection, removal and confiscation of skips;

(d) Lands D enlist the assistance of DCs and DOs, district bodies and the local community in monitoring black spots and reporting offences;

(e) Lands D recover the costs for Government removal of skips; and

(f) Lands D publicise the stepping up of action against unauthorised placing of skips.

Illegal Parking of Bicycles

17. Illegal parking of bicycles on Government land is a common phenomenon in districts where people use them to commute to and from the nearest public transport interchange ("PTI") or ferry pier. Bicycles are often chained to roadside fixtures, causing obstruction. Often, old bicycles are abandoned and become an environmental eyesore and pollutant.

18. SCDA considered some degree of tolerance necessary in view of the need to use bicycles and the inadequacy of designated parking spaces. Enforcement should, therefore, be carried out where illegal parking is causing serious obstruction, inconveniences to other road users or is the subject of frequent public complaints.

Current Legislation and Enforcement

19. Illegally parked bicycles can be removed by Lands D for unauthorised occupation of Government land under section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) or, in the case of abandoned bicycles, as street waste by FEHD under section 9 of the Waste Disposal Ordinance (Cap. 354). They are usually cleared through joint clearance operations initiated by DOs, involving the two departments and the Police.

20. Of all 18 DOs, only Yuen Long has standing guidelines on bicycle clearance operations. Under the guidelines, Lands D would post a notice on each bicycle at least two days before a clearance operation. On the day of operation, Lands D will identify the bicycles for removal by FEHD. HAD officers and the Police will be present, the former to handle public enquiries and complaints and the latter to maintain law and order.

21. Neither Lands D nor TD takes responsibility for bicycles in PTIs. DO/Yuen Long's guidelines also do not cover action on such bicycles. Current enforcement is conducted on an *ad hoc* basis.

22. HAD has indicated that the current approach to enforcement is neither effective nor efficient. An inter-departmental meeting chaired by HAD in November 2007 agreed to explore a more stringent approach involving changes of the legal basis for enforcement. HAD is exploring the feasibility of immediate removal of illegally parked bicycles, but the outcome is unlikely to be available within a short time.

Our Observations

Involvement of District Management

23. Without more durable and more innovative solutions, the situation is unlikely to improve. DOs have a leading role and should formulate a comprehensive strategy in consultation with the local community, especially the DCs, and with other departments. DOs should make positive use of the District Administration Scheme to create new impetus and arrive at total solutions.

Provision of Parking Facilities

24. Bicycle parking facilities at convenient locations are necessary. The Administration should continue to identify sites to ease the shortfall in such provision so that cyclists would not be forced to park their bicycles illegally or have any excuse to do so.

Enforcement Action

25. We commend HAD for initiating and coordinating joint clearance operations. To enhance the effectiveness of such operations, clear inter-departmental guidelines are necessary. We hope that DO/Yuen Long guidelines would offer useful reference for other districts to develop their own guidelines, based on agreed principles, well tried practices and local characteristics.

26. As joint clearance operations require extensive efforts and substantial resources from Government departments, they cannot be frequently or readily conducted. The departments concerned should try quicker action on a smaller scale at more frequent intervals. Where statutory powers are not in doubt, a department should mount its own direct operations, with support from contractors rather than other departments.

Bicycles on Unallocated Government Land and in PTIs

27. HAD has already spent 12 months exploring the feasibility of immediate removal of illegally parked bicycles. This calls for accelerated action.

28. There is a lack of inter-departmental agreement for the clearance of bicycles in PTIs, which causes delay in enforcement. The District Administration Scheme could help bring the departments together. Government should consider legislative amendment if necessary.

Management of Bicycle Parks

29. In designated bicycle parks, a common problem is bicycles being abandoned, left unattended for a long time or overstaying. HAD should explore more innovative ways of managing bicycle parks in consultation with relevant departments and take reference from overseas experience.

Recommendations

30. The Ombudsman recommends that:

(a) DOs formulate a comprehensive strategy to tackle the problem of illegally parked bicycles, in consultation with the DCs and other departments under the District Administration Scheme;

(b) the Administration identify sites to meet the shortfall in the provision of bicycle parking facilities;

(c) DOs develop guidelines on clearance of illegally parked bicycles with reference to Yuen Long's ;

(d) relevant departments try quicker enforcement action on a smaller scale on their own;

(e) HAD to expedite action to explore the feasibility of immediate removal of illegally parked bicycles;

(f) HAD and other departments to work out an inter-departmental agreement for clearing bicycles in PTIs; and

(g) HAD, in consultation with relevant other departments and district bodies, to explore ways of managing bicycle parks to encourage quicker turnover and deter prolonged parking.

On-street Promotional Activities

31. On-street promotional activities range from direct advertising on easy-mount stands to setting up a base for hawking of services on site. Such activities are particularly rampant where pedestrian traffic is heavy, thus causing serious inconvenience.

32. The Administration considers that while control of such activities is necessary because of the nuisance caused, some degree of tolerance has to be given, as these activities provide employment for persons with relatively low skills. Enforcement action is, therefore, for maintaining smooth pedestrian flow and environmental hygiene.

Current Legislation and Enforcement

33. FEHD has statutory powers to tackle illegal hawking of goods under section 83B of the Public Health and Municipal Services Ordinance ("PHMSO") (Cap. 132), obstruction to cleansing operations under section 22 and serious obstruction under section 4A of the Summary Offences Ordinance (Cap. 228). Enforcement priority is accorded to cases involving illegal hawking of goods or obstruction to street cleansing operations.

34. For easy-mount stands, FEHD has the power under section 104E of the PHMSO specifically to take action on "bills or posters". While their definition excludes "structure, apparatus or hoarding used for the display of a bill or poster", the stands can be seized together with the posters themselves, as evidence of the offence of unauthorised display of bills or posters.

35. Upon receiving a complaint, FEHD staff would inspect the site. If on-street promotional stands or activities are found to cause obstruction, staff would verbally warn the persons concerned and request them to disperse or re-align their stands. Written warning or prosecution would follow if verbal warnings go unheeded. Recently, with easy-mount posters becoming more prolific, FEHD has started to take prosecution action under section 104E of the PHMSO.

36. In case of problems it cannot tackle on its own, FEHD would raise with other departments. Joint operations would be conducted as required.

Our Observations

Administration's Stance

37. The Administration's stance towards on-street promotional activities is ambivalent. The Administration does not appear to have a policy to tackle such illegal hawking of services. The argument for tolerance to maintain the employment opportunities provided by on-street promotional activities may well apply to illegal hawking of goods with better justification. On the other hand, those employing mobile or easy-mount stands tend to be major business corporations well able to afford other means of advertising and offer alternative modes of employment. The Administration should attempt to identify and bring to light the ultimate beneficiaries behind the easy-mount stands advertising. We see a need for the Administration to review its outlook, revise its stance and devise a policy for control of on-street hawking of services.

Legislation – long-term measure

38. FEHD cannot rely on section 22 of the PHMSO as the main instrument for enforcement as it is restricted to promotional activities which obstruct cleansing operations. Moreover, it is difficult to establish a case of serious obstruction under section 4A of the Summary Offences Ordinance due to the mobile nature of on-street promotional activities.

39. We appreciate FEHD's recent initiative to take prosecution action against easy-mount posters under section 104E of the PHMSO. It has initiated pilot enforcement exercises in two districts. We consider that upon successful completion of the pilot scheme, FEHD should extend the scheme on a territory-wide basis.

40. However, we consider that the initiative does not offer a full solution as it cannot cover promotional activities where a base is set up for "hawking of services". As an ultimate solution, FEHD should review the PHMSO for powers of enforcement action on hawking of ***services***, not just goods.

Demarcating departmental responsibilities – immediate measure

41. Currently, there are no specific criteria for determining whether to tackle on-street promotional activities by FEHD alone or joint operations. A clearer demarcation of

responsibilities among the relevant departments is necessary and the District Administration Scheme (paras. 4 – 5) should be invoked.

Monitoring and Prompt Action

42. To enable swift and strong action against mobile on-street promotional activities, we consider it important that district bodies, in particular DCs and DOs, and local residents should help monitor black spots and raise early alert. FEHD should continue to mount prompt operations and step up prosecution.

Public Education and Publicity

43. Public education and publicity campaigns will help focus public attention on the problems caused by on-street promotional activities. If it is possible to name the ultimate beneficiaries in reports of successful prosecution cases, it might deter the self-respecting business community from repeated offences.

Recommendations

44. The Ombudsman makes the following recommendations:

(a) the Administration to reconsider its stance and come up with a clear statement on enforcement action;

(b) FEHD to review the PHMSO for powers to take enforcement action on "hawking" of services;

(c) extend the pilot scheme to take prosecution action on easy-mount stands on a territory-wide basis;

(d) HAD and FEHD to work out with other departments through the District Administration Scheme a clearer demarcation of departmental responsibilities;

(e) FEHD to seek assistance from DCs and DOs in monitoring black spots and raising early complaints, with the Department mounting quick operations in response and stepping up prosecution; and

(f) Government in general, and FEHD in particular, to enhance public awareness of the problems caused by on-street promotional activities, including making public reports on convicted cases.

Conclusion

45. How well street management is effected reflects the Administration's determination and the effectiveness of the District Administration Scheme. Proper street management requires clear policies, adequate legislation, sufficient resources, consistent enforcement and effective response on the ground. Community support is also crucial: this should be achieved through consultation with district bodies and local residents, civic education and publicity. Where enforcement

responsibility falls on more than one department, we need clear demarcation of responsibilities, cooperative co-ordination of action and development of longer-term strategy. The District Administration Scheme, recently reinforced and more widely empowered by the Government, should enhance district capability for co-ordination and effective response to district problems.

Office of The Ombudsman
December 2008

1

INTRODUCTION

BACKGROUND

1.1 Over the years, we have been processing complaints of illegal occupation of streets and ineffective enforcement by Government. In more recent times, our cityscape has been marred even more markedly by such activities. We view this a matter of overall "street management".

1.2 On 1 November 2007, The Ombudsman declared, under section 7(1)(a)(ii) of The Ombudsman Ordinance (Cap. 397), direct investigation into three aspects of street management, namely:

- indiscriminate placing of skips at roadside
- illegal parking of bicycles; and
- obstruction and nuisance caused by on-street promotional activities.

STREET MANAGEMENT PROBLEMS

1.3 Street management, broadly speaking, is the maintenance of public streets in safe, hygienic and accessible condition. Problems arise when there is encroachment of public space for private gain, benefit or convenience. Often, the greater the nuisance or inconvenience to the public, the greater the private gain for the perpetrator. Where unchecked, various forms of encroachment have been expanding and extending rapidly at the expense of road safety, pedestrian flow, environmental hygiene and the quality of city life.

1.4 Street management falls within the responsibilities of several Governments departments: the Police, the Food and Environmental Hygiene Department ("FEHD"), the Lands Department ("Lands D") and the Home Affairs Department ("HAD"). Within their individual purview, these departments have been making efforts to tackle the problems. However, resource constraint and competing priorities, as well as gaps or deficiencies in policy and legislative powers, have made for enforcement difficulties.

1.5 In March 2008, the Chief Secretary for Administration issued a circular reminding departments that "district issues, if not addressed in a timely and coordinated manner, may escalate to become problems of territory-wide concerns and hence undermine effective governance and the Government's credibility"[1]. This signals a renewed determination to put district problems and coordination higher on the agenda of District Administration as well as reflecting the priority accorded by Government to resolving district problems.

DISTRICT ADMINISTRATION AND STREET MANAGEMENT

1.6 The District Administration Scheme was introduced in 1982, with the establishment of District Management Committees ("DMCs") and the then District Boards (reconstituted as "District Councils" in 2000) in each of the 18 administrative districts in Hong Kong. The Scheme aims to coordinate provision of services and facilities more effectively at the district level, ensure Government responsiveness to district needs and problems and promote public participation in district affairs.

1.7 District Councils ("DCs") advise Government on matters affecting the local community's well-being. They are intended to reflect public opinion and monitor the provision of public facilities and services in the district. In 2008, their functions have been enhanced to manage designated district facilities, with increased funding and manpower support.

1.8 Chaired by the District Officer ("DO"), the DMC comprises representatives of core departments serving the district and key members of the DC. The role of a DMC is mainly to coordinate and facilitate Government action to resolve district problems (the terms of reference of DMC are at the **Annex**).

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[1] *General Circular No 3/2008 of 13 March 2008 updating arrangements on district administration to implement the Chief Executive's initiatives to enhance the roles of the District Officers and expand the functions of the District Councils.*

1.9 To raise Government's capacity for resolving district problems, DOs are at the centre of an early alert and action mechanism. Government bureaux and departments are required to alert DOs to major or potentially controversial issues. As necessary, DOs may set up District Inter-departmental Committees or ask the departments concerned to set up task forces to expedite resolution of district problems.

1.10 Overarching the districts was a Steering Committee on District Administration ("SCDA") established in 2007 to provide a forum for exchanging views and resolving inter-departmental district management issues centrally. It comprises heads of departments under the chairmanship of the Permanent Secretary for Home Affairs. The Committee only met three times in 2007. Since March 2008, Government has put in place an enhanced mechanism to tackle district problems: the Permanent Secretary for Home Affairs would continue to provide steer on the resolution of problems with policy implications. Unresolved problems may be brought to the personal attention of the Chief Secretary for Administration, who would convene a meeting with the relevant heads of bureaux, Permanent Secretaries and heads of departments as necessary.

THE INVESTIGATION

1.11 In this direct investigation, we have singled out three issues for examination in depth, namely: roadside skips, illegally parking of bicycles and on-street promotional activities, since they impact directly our everyday life and are the subjects of frequent complaints and media attention. Problems caused by on-street promotional activities have been deteriorating, as these activities widely proliferate and their mode of operation has changed from mere display of advertising material to proactive sales promotion on site.

1.12 This direct investigation examines:

(a) the roles and responsibilities of the Government departments concerned in the control and enforcement of these three aspects of street management ;

(b) current legislation and other measures for tackling them;

(c) co-ordination among the departments concerned in taking control and enforcement action;

(d) effectiveness of their measures; and

(e) areas for improvement.

1.13 The departments concerned include FEHD, HAD and Lands D. The Police, which often plays a role in enforcement action, is outside the jurisdiction of this Office but has assisted in this direct investigation.

METHODOLOGY

1.14 We have studied information provided by the three departments as well as other relevant departments such as the Police, the Transport Department and the Highways Department. Such information includes departmental procedures and guidelines, meeting records and correspondence among departments. We have also discussed with representatives of the three departments. In addition, we have examined material such as Legislative Council ("LegCo") records and media reports.

PUBLIC VIEWS

1.15 We have received letters from nine citizens and organisations expressing their views on the issues. We appreciate their views and have reflected them in the report where appropriate.

INVESTIGATION REPORT

1.16 On 23 October 2008, a Draft Investigation Report was sent to the heads of the three departments concerned for comments. Having duly considered and incorporated their comments, we issued this Final Report on 15 December 2008.

2

ROADSIDE SKIPS

THE PROBLEM

2.1 Skips are large open containers commonly used for temporary storage of construction and demolition debris removed from nearby building or renovation sites.

2.2 Public complaints against skips generally focus on their obstruction to vehicular and pedestrian traffic and potential danger to motorists and pedestrians. Statistics on complaints received by Lands D from 2003 to June 2008 is set out in Figure 1 below. It is evidently an increasing problem with decreasing public patience.

Fig 1: Complaints of Skips at Roadside

Year	Complaints to Lands D
2003	90
2004	154
2005	822
2006	424
2007	401
2008 (Jan – Jun)	209

Source: Lands D

ADMINISTRATION'S VIEWS

2.3 In reply to a LegCo Question on 17 October 2007, the Administration openly acknowledged that the fitting-out and construction trades have a practical need for skips, which are normally left at roadside for no more than two to three days. On the one hand, the Administration sees the need to prevent obstruction and unauthorised occupation of public space. On the other, it is concerned that banning skips would lead to indiscriminate dumping of construction waste, which in itself is a worse hazard of traffic obstruction and environmental hygiene. The placing of skips in public places is, therefore, seen as necessary. Skips serve a limited time span at each location and they are normally removed by their owners for use elsewhere. The inconvenience caused to motor and pedestrian traffic is thus considered temporary, and the Administration advocates a pragmatic approach of tolerance towards the problem.

CURRENT LEGISLATION

2.4 Skips placed on public roads without authorisation constitutes illegal occupation of Government land. Under section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28), Lands D can post notices requiring their removal before a specified date, failing which the Department may remove and take possession of them.

ENFORCEMENT PROCEDURES

2.5 The Police could take prompt action and tow away a skip where it causes **serious** obstruction or poses **immediate** danger to road users.

2.6 Lands D is responsible for all other cases. Its "Guidelines for Handling Skips Placed on Public Road" state that staff should first conduct an inspection upon receiving a complaint. If a skip is found, staff should post a notice on the skip, giving the owner at least one day to remove it. A re-inspection should be conducted upon expiry of the deadline stated in the notice. If the skip still remains at the same location after the deadline, Lands D is to arrange for its removal within three working days. The guidelines also ask staff to process complaints promptly so that the impact on road-users is kept to the minimum.

Discussions in SCDA

2.7 At its meeting on 2 May 2007, SCDA suggested that Government consult the trade and issue safety guidelines to it. In January 2008, the Transport Department ("TD") issued guidelines advising the trade, among other things, that all exposed sides of a skip be painted bright yellow, that yellow flashing lights be used during the hours of darkness and that reflective strips be affixed to the skip. Moreover, the name of the company and an emergency contact telephone number should be marked on the skip. However, compliance with these guidelines is voluntary.

2.8 SCDA also invited Lands D to explore the feasibility of setting up a system of approval by permit or by letter of consent. Lands D has explored the issue and discussed with TD on possible options, but they could not agree on such issues as which department should assume primary responsibility and how the scheme is to be administered. Since then, SCDA has not met and the matter remains pending.

COORDINATION AMONG DEPARTMENTS

2.9 Lands D considers itself responsible for skips found on unallocated Government land only, and that other departments should be responsible for managing skips on land allocated to them. Hence, Lands D guidelines state that TD has the enforcement responsibility for skips in public car parks. In consequence, Lands D would refer public complaints on such skips to TD. On the other hand, TD considers itself responsible for traffic management only and would refer public complaints about skips to DO. However, according to HAD, so far no referral has been received by DOs.

2.10 Between 1 April 2005 and 31 December 2007, Lands D received one complaint about skips in a public car park in Tseung Kwan O. In the same period, Lands D took part in eight joint clearance operations proposed by TD, involving four other Government departments (viz. FEHD, the Highways Department, HAD and the Police), against skips in public car parks.

EFFECTIVENESS OF ENFORCEMENT

Confiscation of Skips

2.11 According to Lands D statistics, most skips are removed by their owners before the expiry date stated in its notices (**para. 2.4**). In 2005/06 and 2006/07, only 13 skips were possessed by Government as against the posting of 829 notices.

Timeliness of Enforcement – skips on unallocated Government land

2.12 We have examined the time taken by Lands D for enforcement action. Figure 2 shows the time taken by for Lands D to conduct initial site inspections after receiving complaints of skips placed at roadside.

Fig 2: Time Taken by Lands D for Site Inspections after Receiving Complaints of Skips at Roadside

Year	Complaints	Time taken to conduct site inspection (in working days)			
		1 or less	2 to 3	4 to 5	Over 5
2005/06	782	84 (11%)	229 (29%)	116 (15%)	353 (45%)
2006/07	513	130 (26%)	196 (38%)	98 (19%)	89 (17%)
2007/08 (up to 31 Dec 2007)	319	82 (26%)	104 (33%)	64 (20%)	69 (21%)

Source: Lands D

2.13 Figure 3 shows the time taken by Lands D to conduct re-inspections after posting "confiscation" notices.

Fig 3: Time Taken by Lands D for Re-inspections after Posting Notices on Skips

Year	Re-inspections	Time taken to conduct re-inspection (in working days)			
		Within 2	3 to 5	6 to 7	Over 7
2005/06	169	46 (27.2%)	64 (37.8%)	59 (34.9%)	0 (0%)
2006/07	243	118 (48.6%)	81 (33.3%)	43 (17.7%)	1 (0.4%)
2007/08 (up to 31 Dec 2007)	179	93 (52%)	55 (30.7%)	29 (16.2%)	2 (1.1%)

Source: Lands D

2.14 The figures above show about 40% of the inspections since 2006/07 took place over three working days after the receipt of complaints. For re-inspections, some 20% of cases since 2006/07 took over five working days before action was initiated. This does not comply with the guidelines above (**para. 2.6**) for prompt processing of complaints. Given the supposedly short duration of stay of skips, delayed inspections clearly will have little deterrent effect, and are really a waste of effort and resources!

Case Studies

2.15 The following two complaints handled by this Office illustrate deficiencies in enforcement by Lands D.

Case 1: Delay in Execution

2.16 Lands D received a complaint that skips were regularly found outside a building in Kwai Chung, obstructing traffic. Officers inspected the site on Day 8 and found two skips. No action was taken in the meantime. On Day 43, one more skip was found on site and Lands D officers posted notices on all three skips occupying the roadside. Follow-up inspection on Day 54 found the skips still there. Officers re-inspected the site on Day 59 and found the skips removed.

2.17 The skips had been allowed to stay on site for well over 50 days despite threats of confiscation and specification of deadline in the "confiscation" notices. Lands D's warning was clearly seen through as empty threats and its inspections served no real purpose. The department expanded resources on purportedly addressing the complaint, staff visited and re-visited the site at least 4 times, not to mention follow up reporting within the department about answering the complaint, but all these would appear to be nugatory efforts.

Case 2: Repeated Offences

2.18 Lands D received six complaints about a skip placed outside a shop in Tsim Sha Tsui from November 2006 to June 2007. On each occasion, an officer conducted inspection on the same day and posted a notice on the skip. A re-inspection conducted within three working days found the skip removed. However, the same site was occupied by the same or a similar skip within a short time.

OUR OBSERVATIONS

2.19 These two cases, coupled with the data in Figures 2 and 3, point to a fundamental flaw in Lands D enforcement: its evident delay in action has little, if any, deterrent effect on real or prospective offenders. Some skip operators have learnt to work round Lands D's enforcement procedures and practices, removing their skips in the nick of time, evading confiscation by a narrow margin. Persistent offenders could even schedule removal of their skips just to miss Land D re-inspection, only to place the skips back in position soonest afterwards.

2.20 The guidelines issued by TD (**para. 2.7**) are meant to make it easier for the public to identify skips and reduce the inconvenience caused to them. The guidelines should have been followed by the trade as they are formulated by TD after consulted 80% of the trade. Clearly the trade's willingness to self-regulation is low. Compliance is not helped by the fact that the guidelines are purely voluntary. Given inherent deficiencies in Lands D enforcement action, there is every incentive for non-compliance and none for compliance.

Permit System for Long-term Solution

2.21 The construction and renovation industry has a genuine need for using skips. However, no lawful avenue at present exists for placing skips at roadside. There is an inter-departmental consensus (**para. 2.8**) that a permit system should be developed. Nevertheless, no department has offered to take up the responsibility.

2.22 In the United Kingdom, while practices vary among counties, there is a common statutory requirement for builders to seek prior approval for placing skips in public places. Often, the skip owner (normally a company with skips for hire) is the applicant. Sites for placing skips are not pre-designated, but the location of the skip has to be approved by the authority for each application. In Singapore, skips are allowed on public roads only for loading and unloading purposes subject to compliance with a number of conditions. Skips causing obstruction or damage to public streets are subject to a fine. In Japan, builders have to make prior arrangements with licensed waste handling companies to collect and dispose of construction waste. Therefore, skips are not commonly found on the streets.

2.23 In May 2007, Lands D has been tasked by SCDA to explore the feasibility of setting up a permit system and has explored various options as well as

studying overseas practices. However, no report has yet been submitted to SCDA. In essence, Lands D's efforts have not led to inter-departmental agreement; nor has a lead department been identified for developing a permit system.

2.24 Obviously, this issue has to be taken up by a central authority. In this connection, we note that SCDA has not met since November 2007. Meanwhile, Lands D has not formally reported nor been asked to submit a progress report. The matter has simply been allowed to languish. We see an urgent need to reconvene SCDA so as to pick up the momentum.

2.25 For a permit system, we consider that TD's regime for driver and vehicle registration offers useful reference: it is relatively simple in operation and efficient in control. Another example is the Highways Department's existing permit system for road works. In the proposed permit system for skips, TD guidelines **(para. 2.7)** can be incorporated as conditions of approval, to be enforced where due. Reference should also be taken from good practices and experience of other territories.

Short-term Improvement

2.26 A permit system will take time to develop and implement especially if legislation is required. Public consultation is also needed. Meanwhile, Lands D should tighten enforcement procedures and demonstrate firm determination for action. Some short-term improvement measures are examined below.

Timely Inspection and Re-inspection – skips at roadside

2.27 As roadside skips are easily placed, removed and re-instated by the operators, prompt action in detection and swift enforcement is crucial. Admittedly, Lands D is obliged by law to give reasonable notice before taking removal action and skip owners should be given prior notification / warning and a chance for self-removal. However, any delay in action beyond the normal service span of the skip will signify *de facto* toleration of the infringement. The public may even perceive this as Lands D procrastinating in the hope that the problem would remove itself.

2.28 Lands D should streamline inspection procedures and tighten the time line for enforcement. Re-inspection, evidently to verify compliance, should be carried out immediately on expiry of the deadline specified in the notice. Follow-up

action, where necessary, should then be taken straightaway. Another inspection later should detect and deter repeat offence. Lands D's guidelines should be revised accordingly.

2.29 Similarly, monitoring of black spots and early alert of offences will enable timely enforcement. In this regard, Lands D should enlist the assistance of district bodies and local residents through the DC and DO for monitoring and case reporting. Since February 2004, it has been agreed that other departments such as TD, the Highways Department, HAD and FEHD would refer public complaints to the relevant District Lands Officer by fax, with a copy to the Police for information.

Further Measures

2.30 The internal guidelines of Lands D were not clear on how the identification of the skip operator could help in enforcement action or in getting the skip removed promptly. The guidelines should require enforcement staff to contact skip operators to demand removal of their skips. We are pleased that subsequent to our enquiry, Lands D has instructed staff to try to contact the skip owner for removal of the skip.

2.31 Furthermore, we consider it both reasonable and necessary for Lands D to recover costs for Government removal of a skip on expiry of notice from the person convicted under section 6 of Land (Miscellaneous Provisions) Ordinance. This is particularly so if the skip operator has been notified to remove the skip and failed to do so. In fact, Lands D already has such power under section 6(5) of the Land (Miscellaneous Provisions) Ordinance. It only takes the will to exercise its authority.

Clearing Skips in Public Car Parks

2.32 The problem of leaving skips in public car parks is, so far, not serious and joint operations have been effective. However, the situation may well change when enforcement against skips at roadside is strengthened. The situation in public car parks should be kept under review.

RECOMMENDATIONS

2.33 In the light of our findings, The Ombudsman recommends that:

(a) SCDA reconvene promptly for (b) below (**para. 2.24**);

(b) Lands D report to SCDA the results of its study on the proposed permit system for regulation of roadside skips (**paras. 2.21 – 2.23**);

(c) Lands D tighten its timeframe for inspection and re-inspection, removal and confiscation of skips (**para. 2.28**);

(d) Lands D enlist the assistance of DCs and DOs, district bodies and the local community in monitoring black spots and reporting offences (**para. 2.29**);

(e) Lands D recover the costs for Government removal of skips (**para. 2.31**); and

(f) Lands D publicise the stepping up of action against unauthorised placing of skips in public places and public car parks.

3

ILLEGAL PARKING OF BICYCLES

THE PROBLEM

3.1 Illegal parking of bicycles on Government land is a common phenomenon in districts where people use them to commute to and from the nearest public transport interchange ("PTI") or ferry pier. To guard against theft, illegally parked bicycles are often chained to roadside fixtures or railing, thus causing obstruction. Often old bicycles are simply abandoned on-street and become an environmental eyesore and pollutant. These problems are particularly rampant in areas with no designated bicycle parks.

3.2 Complaints lodged with Lands D and HAD show a rising trend. For instance, HAD received 382 complaints in 2003/04 and 540 in 2006/07. Similarly, complaints received by Lands D rose from 219 in 2003/04 to 301, 533 and 788 in 2004/05, 2005/06 and 2006/07 respectively.

3.3 Over 90% of the cases relate to the New Territories, notably in Sai Kung, Sha Tin, Tai Po, Tuen Mun and Yuen Long.

ADMINISTRATION'S VIEW

3.4 SCDA considered some degree of tolerance necessary in view of the need to use bicycles and the inadequacy of designated parking spaces. Enforcement should be carried out where illegal parking causes serious obstruction, inconveniences

to other road users or is the subject of frequent public complaints.

CURRENT LEGISLATION

3.5 Lands D has authority to remove bicycles for unauthorised occupation of Government land under the Land (Miscellaneous Provisions) Ordinance (Cap. 28).

3.6 Bicycles abandoned, or no longer used by their owners can be regarded as street waste. FEHD could remove and dispose of them under section 9 of the Waste Disposal Ordinance (Cap. 354). When FEHD staff has reasonable grounds to suspect that a bicycle has been abandoned or become useless (e.g. rusty or with missing parts), they will post a notice on the bicycle to notify the owner of their intended removal of the bicycle after 14 days. Removal action will be taken when the notice expires.

ENFORCEMENT ACTION

3.7 Illegally parked bicycles are cleared through joint clearance operations. HAD (i.e. DOs) initiates and coordinates action with relevant departments such as Lands D, FEHD and the Police. The frequency of joint clearance operations varies from district to district. In most New Territories districts, joint clearance operations are held at bi-weekly to quarterly intervals, depending on the seriousness of the problem and such factors as public complaints, views of DC Members and observations during site inspections by the departments.

3.8 Statistics from HAD show a steady increase in joint clearance operations. From 2004 to 2007, the number of joint clearance operations increased from 88 to 169, with over 35,000 bicycles confiscated. These operations took place mainly in Sai Kung, Sha Tin and Yuen Long.

Guidelines for Removal

Yuen Long District Office Guidelines

3.9 HAD headquarters and most DOs do not have standing guidelines on bicycle clearance operations. DO/Yuen Long has, however, developed "Broad

Operational Guidelines for Removing Improperly Parked Bicycles in Yuen Long" in 2001. It sets out enforcement action under different circumstances, as described below.

3.10 For bicycles on unallocated Government land, Lands D would, under the Land (Miscellaneous Provisions) Ordinance, post a notice on each bicycle for enforcement at least two days before the joint clearance operation. Lands D would keep records of such bicycles.

3.11 On the day of operation, Lands D will check against the records and identify the bicycles for removal. FEHD will then remove them to the pound as confiscated property of Lands D. HAD officers and the Police will be present, the former to handle public enquiries and complaints and the latter to maintain law and order. The confiscated bicycles will then be disposed of by Lands D. Their owners cannot claim them back.

3.12 For bicycles in bicycle parks, the Road Traffic Ordinance (Cap. 374) is invoked to clear the one left for long period of time. TD will notify the public through Traffic Advice that on a certain date the park is to be closed for maintenance. The Police will post notices at, and in the vicinity of, the park asking owners to remove their bicycles. This is normally done at least seven days before the joint clearance operation. On the day of operation, FEHD will remove all bicycles remaining in the bicycle park and put them under Police custody. Bicycle owners can claim back their bicycles.

3.13 In 2007, DO/Yuen Long consulted other Government departments in reviewing its guidelines. The revised guidelines were issued in July 2008. There is no change to the arrangement for clearing bicycles on unallocated Government land. For those in bicycle parks, TD and the Police will first suspend the use of bicycle park before Lands D post notices on the bicycles for enforcement under the Land (Miscellaneous Provisions) Ordinance. Bicycle owners cannot claim back the confiscated bicycles.

Lands D Guidelines

3.14 Lands D has issued internal "Guidelines for Removing Bicycles at Road-side Railings" in 2005. Its role is generally reflected in paragraphs 3.10 and 3.11 above. The guidelines also state that the arrangements apply only to public

roads. The responsibility rests with TD for bicycles in bicycle parks and PTIs designated under the Road Traffic Ordinance.

Improvement to Procedures

3.15 In concluding our investigation of a complaint case in 2007, we suggested some improvement to the above procedures. The complainant alleged that Lands D had confiscated and disposed of his bicycle without having posted a notice before the clearance operation. We found that Lands D staff had posted a notice on and taken photographs of each bicycle before clearance, but had not photographed those bicycles confiscated on the day of the operation.

3.16 In September 2007, this Office recommended Lands D to post an extra advisory notice at prominent locations on the operation site to warn bicycle owners of the clearance operation and to photograph each and every confiscated bicycle on the day of clearance operation as evidence. Furthermore, Lands D should explore ways to handle the confiscated bicycles, such as public auction: disposal of confiscated bicycles as landfill is clearly wasteful and not environment-friendly. Lands D accepted our recommendations. From October 2007 to September 2008, a total of 3,713 confiscated bicycles were sold for $91,800 through public auction.

Review of Enforcement Approach

3.17 In a paper to SCDA in November 2007, HAD indicated that the current approach to enforcement was neither effective nor efficient. The requirement for one day's notice before taking enforcement action renders immediate removal of the offending bicycles impossible. Moreover, the notice would lapse if the owner moves the bicycle to another location nearby. An inter-departmental meeting chaired by HAD on 15 November 2007 agreed to explore a more stringent approach involving changes of the legal basis for enforcement.

3.18 HAD is exploring the feasibility of immediate removal of illegally parked bicycles. However, the outcome is unlikely to be available within a short time.

COORDINATION AND EFFECTIVENESS OF ENFORCEMENT

3.19 We note that in most cases, the illegally parked bicycles were removed by their owners before the expiry of the notices posted by Lands D. The number of bicycles confiscated over the number of notices posted fell from some 38% in 2005/06 to below 30% in 2006/07 and 2007/08 (up to December 2007).

Bicycles at Roadside

3.20 Bicycles parked at roadside are cleared through joint clearance operations as outlined in paragraphs 3.10 and 3.11 above. The roles of the departments concerned are clearly defined.

Bicycles in Bicycle Parks

3.21 According to DO/Yuen Long guidelines of 2008, the Land (Miscellaneous Provisions) Ordinance is invoked to clear bicycles in bicycle parks. TD will first issue Traffic Advice to suspend the use of the designated bicycle parking spaces. The Police will post notices to remind owners to remove their bicycles. The Police will also cover the bicycle park signs to signify their being put out of use. Lands D will post notices on the bicycles to be cleared.

3.22 In some cases, FEHD clears obsolete or abandoned bicycles in bicycle parks under the Waste Disposal Ordinance as stated in paragraph 3.6 above.

Bicycles in Public Transport Interchanges

3.23 Neither Lands D nor TD takes responsibility for bicycles in PTIs. DO/Yuen Long guidelines also do not cover action on such bicycles. There is no agreement among the departments and enforcement is *ad hoc*, as illustrated by the following case study.

3.24 Since May 2006, several complaints had been lodged with various departments about bicycles illegally parked in a PTI beneath a private residential estate. Every department denied responsibility and referred the case to another department. For example, Lands D maintained that the Land (Miscellaneous Provisions) Ordinance, which concerns public land, was inapplicable as the PTI is on leased land. Lands D referred the case to TD as the PTI is within TD's purview.

TD, however, has no legislation empowering it to remove bicycles from PTIs and suggested that FEHD remove the bicycles if they were considered an "environmental nuisance". FEHD clarified that serviceable bicycles are not regarded as waste and cannot be disposed of as such.

3.25 In the end, the case was referred to the DMC (**para. 1.6**) in November 2007. Following discussion and agreement reached by the Committee, a special one-off operation involving the Police, FEHD, TD and DO was conducted in December 2007 to clear the bicycles on grounds of obstruction under section 4A of the Summary Offences Ordinance (**para. 4.8**). Although the case has thus been concluded, it remains unresolved which department should be responsible for clearing bicycles in PTIs.

OUR OBSERVATIONS

Involvement of District Management

3.26 Illegally parked bicycles are not the most serious of street management problems in terms of environmental nuisance or public inconvenience. However, the situation above throws into sharp focus common issues: the inadequacy of lawful alternatives (in this case, designated parking spaces), lack of dedicated legislation, unclear division of responsibilities and cumbersome procedures for enforcement. While the Administration has so far been able to contain the problem through coordinated efforts of the departments concerned, the situation is unlikely to improve without more durable and more innovative solutions.

3.27 DOs have a leading role and should formulate a comprehensive strategy in consultation with the local community, especially the DCs, and with other departments. In the meantime, DOs in consultation with DMCs and the District Inter-departmental Committees (**para. 1.9**) should step up enforcement for effective deterrent. Where departmental responsibilities are unclear or legislation inadequate, DOs should escalate the issues to the heads of departments or even heads of bureaux as necessary (**paras. 1.9 – 1.10**). In short, DOs should make positive use of the District Administration Scheme to create new impetus and arrive at total solutions, for both the short and the long term.

Provision of Parking Facilities

3.28 As it is common for New Territories residents to use bicycles for transport, bicycle parking facilities at convenient locations are necessary. We note that Government has created over 7,800 new parking spaces in the past four years and since 2006 adopted a new provision standard for bicycle racks to increase the capacity of bicycle parks by 20%. We urge the Administration to continue identifying sites for bicycle parks, so that cyclists would not be forced to park their bicycles illegally or have any excuse to do so.

Enforcement Action

3.29 We commend HAD for initiating and coordinating joint clearance operations. To enhance the effectiveness of such operations, clear inter-departmental guidelines are necessary. We hope that the updated guidelines in DO/Yuen Long would offer useful reference for other districts to develop their own guidelines, based on agreed principles, well tried practices and local characteristics. HAD headquarters expects this to be accomplished in about six months' time.

3.30 While joint clearance operations are normally quite effective, they require extensive efforts and substantial resources from Government departments. They cannot, therefore, be frequently or readily conducted. We consider that the departments concerned should try quicker action on a smaller scale at more frequent intervals for greater efficiency. In particular, where statutory powers are not in doubt, a department should mount its own direct operations, with support from contractors rather than other departments.

Bicycles on Unallocated Government Land

3.31 Since the inter-departmental meeting in November 2007 (**para. 3.17**), HAD has spent 12 months exploring the feasibility of immediate removal of illegally parked bicycles. This calls for accelerated action.

Bicycles in PTIs

3.32 The lack of inter-departmental agreement for the clearance of bicycles at PTIs and the delay thus caused are clearly illustrated in the case cited above (**para. 3.24**). This is again an issue which the District Administration Scheme could help to

resolve (**para. 3.27**).

Management of Bicycle Parks

3.33 In designated bicycle parks, a common problem is bicycles being abandoned or left unattended for a long time. Another problem is overstaying at popular spots, where a maximum parking time is imposed.

3.34 We appreciate the joint enforcement efforts by Government departments (**paras. 3.12 and 3.21**). However, they do not provide a lasting solution or sufficient deterrence. We recommend that HAD explore more innovative ways of managing bicycle parks in consultation with other departments.

3.35 In the light of experience in other jurisdictions, we find the following mode of management worth consideration. To encourage quicker turn-around time and deter prolonged parking and abandoning of bicycles, a maximum parking duration is imposed. The cyclist is required to pay a deposit, to be returned when the bicycle leaves before the expiry of the period. Having paid the deposit, the cyclist will be issued a ticket for sticking on to the bicycle, showing the parking time allowed. Enforcement can be made by a roving patrol team to remove overstaying bicycles immediately. Bicycles so removed can be reclaimed at a fee within a fixed period, beyond which the bicycles will be confiscated. Operational details may be discussed with the district bodies, especially the DCs.

3.36 HAD has doubts about the public's acceptance of this proposal. In its view, the need to pay would become an economic disincentive for cyclists to use the designated bicycle parks, thus aggravating the current problem of illegally parking at roadside. We do not agree. A deposit involves no actual charge since the payment will be refunded in full. The system is to encourage the proper use of bicycle parks and a quicker turnover. To resolve the illegal parking problem, a parallel approach of providing convenient and well-managed lawful facilities on the one hand and effective enforcement against illegal parking on the other is definitely required. The argument advanced by HAD that the proposed mode of management would require "a major cultural change" is unjustified.

RECOMMENDATIONS

3.37 In the light of the above, The Ombudsman recommends that:

(a) DOs formulate a comprehensive strategy to tackle the problem of illegally parked bicycles, in consultation with the DCs and other departments under the District Administration Scheme **(para. 3.27)**;

(b) the Administration identify sites to ease the shortfall in the provision of bicycle parking facilities **(para. 3.28)**;

(c) the DO of each district develop guidelines on clearance of illegally parked bicycles with reference to the guidelines developed in Yuen Long district **(para. 3.29)**;

(d) relevant departments try quicker enforcement action on a smaller scale on their own **(para. 3.30)**;

(e) HAD to expedite action to explore the feasibility of immediate removal of illegally parked bicycles **(para. 3.31)**;

(f) HAD and other departments to work out an inter-departmental agreement for clearing bicycles in PTIs **(para. 3.32)**; and

(g) HAD, in consultation with other departments and district bodies, to explore ways of managing bicycle parks to encourage quicker turnover and deter prolonged parking of bicycles **(paras. 3.34 and 3.35)**.

4

ON-STREET PROMOTIONAL ACTIVITIES

THE PROBLEM

4.1 On-street promotional activities are a simple, low-cost and effective tool for advertising and even for actual business transaction. It is widely used for promoting or selling services such as credit cards, internet service, pay television, health care and beauty products. They range from direct advertising on easy-mount stands to the setting up of a base for hawking of services on site. Such activities are particularly rampant at locations where pedestrian traffic is heavy and where the inconvenience caused is, therefore, serious – on the pavement, at roadside, near shopping malls and at MTR entrances and exits. Generally, the busier an area is, the more likely operators are to congregate.

4.2 Statistics show that the number of complaints received by FEHD about on-street promotional activities has increased phenomenally: by 98% from 764 in 2003/04 to 1,514 in 2004/05 and then to 1,884 and 1,775 in 2005/06 and 2006/07 respectively. Most of the verbal and written warnings given by FEHD related to the use of easy-mount stands.

4.3 Akin to these are roadside banners of LegCo and DC Members, non-governmental organisations and Government departments for promoting their causes. These activities are governed by a special scheme administered by Lands D. The scheme is the subject of a separate investigation by The Ombudsman.

ADMINISTRATION'S VIEW

4.4 In a paper to the LegCo Panel on Home Affairs in March 2007 (LC Paper No. CB(2) 1215/06-07(05)), the Administration set out its considerations on the problem. In brief, while control is necessary because of the nuisance caused, some degree of tolerance has to be given, as these activities provide employment for persons with relatively low skills. Enforcement action aims to maintain smooth pedestrian flow and environmental hygiene.

CURRENT LEGISLATION

4.5 FEHD has statutory powers to tackle on-street promotional activities under the Public Health and Municipal Services Ordinance (Cap. 132) ("PHMSO") and Summary Offences Ordinance (Cap. 228). Since FEHD's primary concern is maintaining public cleanliness and environmental hygiene, enforcement priority has hitherto been accorded to obstruction cases which involve illegal hawking.

Public Health and Municipal Services Ordinance

4.6 Section 83B of the PHMSO provides that it is an offence to hawk in any street without a licence. FEHD has the power to take action if an on-street promotional activity constitutes a hawking offence. However, operation of promotional easy-mount stands usually does not involve the actual sale of goods or merchandise and thus falls outside the definition of "hawking" under the PHMSO.

4.7 Section 22 of the PHMSO states that it is an offence for any person to obstruct or place articles to obstruct any cleansing operations. FEHD staff could affix a notice to any article causing such obstruction to require the owner to remove it within four hours. Failure to do so may result in the article being seized and detained. However, such power can be exercised only if the article causes obstruction to cleansing operations.

Summary Offences Ordinance

4.8 Section 4A of the Summary Offences Ordinance states that it is an offence to set out anything that obstructs, inconveniences or endangers any person or vehicle in a public place. FEHD staff and the Police could take enforcement action

including warning, arrest and prosecution, against on-street promoters for obstruction.

4.9 FEHD takes enforcement action in case of serious obstruction. According to its internal guidelines, the seriousness of obstruction depends on such factors as width of the pavement, the pedestrian flow at the time, the scale of obstruction and the need for pedestrians to go around the article(s) concerned for access. While each case must be considered in the light of the actual circumstances, promotional stands gathered in a cluster (for competition) or promotional stands set up high (for attention) block access and impede progress. These could meet the criteria for enforcement.

4.10 With particular regard to easy-mount stands, while FEHD has the power under section 104E of the PHMSO to take action on bills or posters, the definition of "bill or poster" excludes "structure, apparatus or hoarding used for the display of a bill or poster". This complicates the situation and the application of the full force of section 104E to easy-mount stands could not be taken until the legal aspects are clarified.

ENFORCEMENT ACTION

4.11 At the moment, upon receiving a complaint, the Hawker Control Team of FEHD would inspect the site. If on-street promotional stands or activities are found to cause obstruction, staff would warn the persons concerned verbally and request them to disperse or re-align their stands to avoid obstructing smooth pedestrian flow. Written warning or prosecution will follow if verbal warnings go unheeded.

4.12 FEHD enforcement action has been on the increase. Figure 4 enumerates its action on easy-mount stands in recent years.

Fig 4: FEHD Warnings and Prosecutions Related to Easy-mount Stands

Year	Verbal warning	Written warning	Prosecution
2003/04	2,916	17	16
2004/05	4,298	861	4
2005/06	4,627	215	314
2006/07	4,981	342	637
2007/08 (up to 31 Dec 2007)	5,551	44	556

Source: FEHD

COORDINATION AMONG DEPARTMENTS

4.13 FEHD would raise at the DMC particular problems which it cannot tackle on its own. Joint operations will then be considered, and conducted as required.

4.14 FEHD has conducted over 200 joint operations with the Police each year since 2005/06. On top of these, there are less than 20 joint operations with HAD and/or other Government departments. The role of the Police is mainly to escort FEHD staff and to maintain law and order.

EFFECTIVENESS OF ENFORCEMENT

Outcome of Prosecutions

4.15 Most of the prosecutions against on-street promotional activities using easy-mount stands are made under section 4A of the Summary Offences Ordinance. The outcome of prosecutions in recent years is shown in Figure 5.

Fig 5: Outcome of Prosecutions Related to On-street Easy-mount Stands

Year	Prosecution	Conviction	No conviction	Others (e.g., withdrawn; results pending)
2003/04	16	16	0	0
2004/05	4	4	0	0
2005/06	314	312	0	2
2006/07	637	634	0	3
2007/08 (up to 31 Dec 2007)	556	533	2	21

Source: FEHD

4.16 Section 4A of the Summary Offences Ordinance prescribes the maximum penalty as a fine of $5,000 or imprisonment for three months. In the above cases, only fines ranging from $100 to $700 were imposed.

Case Studies

4.17 The following cases illustrate to what extent FEHD is effective in handling complaints about on-street promotional activities. Two concern FEHD joint operations and one, a complaint handled by this Office.

Case 1: Joint operation on 23 October 2007

4.18 On 25 September 2007, DO/Central & Western of HAD referred to FEHD a media report complaining about unauthorised display of stands along the Mid-Levels escalator in the SoHo area. FEHD replied on 27 September that it had received a similar complaint and asked DO to arrange a joint operation involving the Police. On 9 October, FEHD urged DO again. On 18 October, DO proposed a joint operation with the Police and FEHD on 23 October. However, no enforcement action was eventually taken as the obstruction had by then disappeared.

Case 2: Joint operation on 19 December 2007

4.19 On 13 November 2007, the Central & Western DC Secretariat, staffed by HAD, received a complaint that many advertising signs had been placed along the pavement of Wyndham Street. The complainant alleged that the signs were obstructing pedestrians and posing danger to both pedestrians and motorists. The DC Secretariat referred the case to Lands D and FEHD and sought a reply by 14 December.

4.20 On 14 November, FEHD referred the complaint to DO/Central & Western with a request for a joint operation. On 6 December, FEHD reiterated its request. In the absence of a response from DO, FEHD wrote directly to Lands D and the Police on 18 December, proposing a joint operation on 19 December.

4.21 A joint operation eventually took place. Easy-mount stands were found, but not causing obstruction to street cleansing operation. Upon being advised, the persons concerned removed all the stands.

Case 3: Constraints in Enforcement Action

4.22 This Office received a complaint against FEHD for failing to take effective enforcement action against obstruction and nuisance caused by on-street

commercial promotional activities at the junction of King's Road and Shu Kuk Street. This is one of the busiest areas in Eastern District with heavy pedestrian flow and a prime site for on-street promotional activities using mobile stands or placards.

4.23 Replying to our inquiry, FEHD stated that on-street promotional activities using mobile stands or placards do not involve the actual display or sale of goods or merchandise and, therefore, fall outside the legal definition of "hawking" and that the Department's primary concern is environmental hygiene and food safety. Its action should thus target at illegal hawking and related activities that obstruct street cleansing operations. If such activities cause substantial obstruction, FEHD will take enforcement action under section 4A of the Summary Offences Ordinance, particularly if the offence is associated with illegal hawking.

4.24 The complainant lodged two complaints with FEHD within five months. During that period, FEHD visited the location 28 times, with minor obstruction or none observed. A total of 32 verbal warnings were issued to the on-street promoters. No prosecution was made.

OUR OBSERVATIONS

4.25 From these three cases, it is evident that in spite of FEHD's earnest efforts, the present approach is grossly inadequate. FEHD's requests for action often meet with no response from other departments. Even where joint operations were eventually organised, such operations often took too long to organise and were resources intensive. It is no surprise that on-street promotional activities have become a widespread and serious problem, indeed even more so than illegal hawking of goods in some districts. To get at the crux of the problem, we need to examine the fundamental issues.

Administration's Stance

4.26 The Administration's stance towards on-street promotional activities (**para. 4.4**) is ambivalent. Unlike the problem of illegal hawking of goods, the Administration does not appear to have a policy to tackle illegal hawking of services. The argument for tolerance to maintain the employment opportunities provided by on-street promotional activities may well apply to illegal hawking of goods, with better justification too. Illegal hawkers of goods are mainly low-skilled individuals

earning their livelihood by self-employment.

4.27 On the other hand, those employing mobile or easy-mount stands tend to be major business corporations well able to afford other means of advertising and offer alternative modes of employment. We see a need for the Administration to review its outlook, revise its stance and devise a policy for on-street hawking of services. It is inconceivable that such commercial organisations are not aware that the on-street promotional activities breach the law for private gain at public expense (**para. 1.3**). Such activities demonstrate a lack of social responsibility and disregard for law enforcement. To provide some disincentive, the Administration should attempt to identify and bring to light the ultimate beneficiaries behind the easy-mount stands advertising.

Legislation – long-term measure

4.28 The cases above (**paras. 4.18 – 4.24**) show how FEHD's repeated efforts to contain the problem have been futile. Action can be taken on such promotional activities only where they obstruct cleansing operations. The difficulty for FEHD enforcement is in direct proportion to the ready mobility of the promotional activities. Section 22 of the PHMSO (**para. 4.7**), therefore, cannot be relied upon as the main instrument for enforcement.

4.29 Section 4A of the Summary Offences Ordinance is more potent and FEHD has been relying on it in the main. However, it is difficult for FEHD staff to establish a case of serious obstruction under its internal guidelines, again due to the mobile nature of on-street promotional activities.

4.30 Commendably, FEHD now has a plan to take prosecution action on easy-mount stands as display of bills and posters without permission. It has recently informed this Office that according to the latest legal advice, easy-mount stands can be seized, together with the posters themselves, as evidence of the offence of unauthorised display of bills or posters under section 104E of the PHMSO (**para. 4.10**). Based on this, FEHD has revised its guidelines and initiated pilot enforcement exercises in two districts. The plan also includes efforts to enlist the help of DC Members and the cooperation of the "beneficiary" companies advertised by easy-mount stands. Upon successful completion of the pilot scheme, we urge FEHD to extend the scheme on a territory-wide basis.

4.31 We appreciate FEHD's commendable initiative and believe that it will offer some immediate relief welcomed by the public. However, the approach does not offer a full solution, especially as it only serves to cope with on-street advertising with posters, but not promotional activities with a base set up for "hawking of services".

4.32 We consider that, as an ultimate solution, FEHD should review the PHMSO for powers to take enforcement action on hawking of ***services***, not just goods. FEHD currently deploys considerable resources for controlling on-street promotional activities, but the returns are disproportionate and often transient.

Demarcating departmental responsibilities – immediate measure

4.33 Although FEHD has been trying hard to tackle on-street promotional activities through departmental action or joint operations, there are no specific criteria for determining which course of action to take. In cases 1 and 2 above (**paras. 4.18 – 4.21**), the problems shuttled between DO and FEHD, whereas it would appear that FEHD itself could have initiated action. In the process, delay was caused and the public confused. A clearer demarcation of responsibilities among the relevant departments is necessary and the new mechanism under the District Administration Scheme should, quite properly, be invoked for this purpose (**paras. 1.6 – 1.10**).

Monitoring and Prompt Action

4.34 On-street promotional activities are mobile and thus elusive. The key, therefore, is swift and strong action. For this, FEHD needs assistance in law, in resources and in local support. Apart from the measures suggested above, we consider it important that district bodies and local residents, in particular DCs and DOs, should help monitor black spots and raise early alerts, with FEHD mounting prompt operations and stepping up prosecution. On-street promotional activities are a hard nut to crack and Government should acquire the appropriate tool for it.

Public Education and Publicity

4.35 Government has been mounting public education and publicity campaigns against activities such as illegal hawking with positive effect. Similar efforts will focus public attention on the problems caused by on-street promotional activities. The message that these activities encroach upon public space for private

gain, obstruct public access and drain public resources should persuade the organisations behind the stand operators to reconsider their involvement, bearing in mind their reputation as good corporate citizens.

4.36 We note that the FEHD intends to publicise the pilot exercises mentioned above (**para. 4.30**). This should enhance public awareness that behind the on-street promotional activities are beneficiaries well able to afford legal media for advertising. If it is possible to name these ultimate beneficiaries in the reports of successful prosecution cases, a deterrent effect may be generated at least on the self-respecting business community.

RECOMMENDATIONS

4.37 Based on the above observations, The Ombudsman makes the following recommendations:

Administration's Stance

(a) the Administration to reconsider its stance on the problem and come up with a clear statement on enforcement action (**paras. 4.26 – 4.27**);

Long-term Measure

(b) FEHD to review the PHMSO for powers to take enforcement action on "hawking" of services (**para. 4.32**);

Short-term Measures

(c) Extend the pilot scheme to take prosecution action on easy-mount stands on a territory-wide basis (**para. 4.30**);

(d) HAD and FEHD to work out with other departments through the District Administration Scheme a clearer demarcation of departmental responsibilities (**para. 4.33**);

(e) FEHD to seek assistance from DCs and DOs in monitoring black spots and raising early complaints, with the Department mounting quick operations in response and stepping up prosecution (**para. 4.34**); and

(f) Government in general, and FEHD in particular, to enhance public awareness of the problems caused by on-street promotional activities, including making public reports on convicted cases (**paras. 4.35 – 4.36**).

5

CONCLUDING REMARKS

5.1 Street management affects the quality of our community life as well as the image of Hong Kong as a world city. How well street management is effected is a reflection of the Administration's determination and the effectiveness of the District Administration Scheme.

5.2 Street management problems are diverse and widespread, with most of them mobile and recurrent. Proper street management requires clear policies, adequate legislation, sufficient resources, continuing enforcement and effective response on the ground. Community support is also crucial: this should be achieved through consultation with district bodies and local residents, civic education and publicity. Where enforcement responsibility falls on more than one department, we need clear demarcation of responsibilities, cooperative co-ordination of action and development of longer-term strategy. They may well require changes to policy and legislation. However, public interest and Hong Kong's image, good governance and respect for the law are important stakes to safeguard.

5.3 The three aspects of street management problems we have examined clearly demonstrate the problems of coordination and readiness to assume primary responsibility in matters involving multiple Government departments and district bodies. The measures taken to counter the problems are *ad hoc,* inadequate, inefficient and often ineffective. The outcome is not proportionate with the substantive input of resources.

5.4 The District Administration Scheme, recently reinforced and more widely empowered by Government, should enhance district capability for co-ordination and effective response to district problems. The strengthened role of

the DO, better defined departmental responsibilities and designated avenues for resolution of departmental differences (**paras. 1.9 – 1.10**), should provide better means and renewed momentum. In particular, the personal involvement of the Chief Secretary for Administration should help resolve matters where necessary (**para. 1.10**). We see the stage well set for action and we look forward to positive improvement.

5.5 This Office will be vigilant, keeping a close watching brief on developments. We will monitor progress with our recommendations.

ACKNOWLEDGEMENT

5.6 The Ombudsman thanks the Director of Food and Environmental Hygiene, Director of Home Affairs and Director of Lands and their staff for assistance and cooperation in this exercise.

Office of The Ombudsman
Ref. OMB/DI/163
December 2008

ANNEXES

Annex
(para. 1.8)

District Management Committee

Terms of Reference

The terms of reference of a District Management Committee are :-

(a) to provide a forum for departments to discuss and resolve district problems;

(b) to respond positively to the advice and requests of the District Council and to assist the Council to perform its role effectively;

(c) to identify district needs, establish priorities between these needs and ensure that Government programmes are planned and implemented to meet the needs in time;

(d) to co-ordinate departments' activities and programmes in the management of district affairs, to maximize the utilization of Government resources and ensure that full account is taken of the community needs;

(e) to encourage and facilitate the participation of the residents in activities aimed at enhancing the residents' sense of belonging to the community and improving the environment of the district;

(f) to advise on the temporary use of vacant Government land;

(g) to consider how best Government policies should be put into effect in the district taking into account its special circumstances; and

(h) to submit a comprehensive written report to each meeting of the District Council on the work of the District Management Committee, with a detailed account of the progress of follow up actions requested by the District Council.

List of Government Representatives

District Officer (Home Affairs Department)

Superintendent (Food and Environmental Hygiene Department)

District Leisure Manager (Leisure and Cultural Services Department)

District Lands Officer (Lands Department)

Chief / Senior Transport Officer (Transport Department)

District Commander (Hong Kong Police Force)

District Social Welfare Officer (Social Welfare Department)

Chief / Senior Housing Manager (Housing Department)

Chief Schools Development Officer (Education Bureau)

Chief Engineer/Senior Engineer (Civil Engineering and Development Department)

District Planning Officer (Planning Department)

Chief Building Surveyor/Chief Structural Engineer (Buildings Department)